SUPREME COURT OF THE UNITED STATES.

No. 494.—October Term, 1940.

The United States of America, Petitioner,
vs.
Joseph T. Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[February 3, 1941.]

Mr. Justice Douglas delivered the opinion of the Court.

The question here is the same as that in *Guggenheim* v. *Rasquin*, No. 92, decided this day. Consequently the decision of the Circuit Court of Appeals holding that cash-surrender value on the dates of the gifts was the proper method of valuing single-premium life insurance policies for gift-tax purposes (114 F. (2d) 150) must be reversed, unless the elapse of time between the issuance of the policies and the making of the gifts calls for a different result. The single-premium policies here involved were taken out by the insured in 1928 and 1929. They were assigned as gifts in December, 1934, when the insured was 79 years old. The cost of the policies was less than their cash-surrender value at the dates of the gifts. But the cost of replacing the policies at the then age of the insured would have been in excess of their cash-surrender value. We think that such cost of replacement, as held by the District Court, is the best available criterion of the value of the policies for the purposes of the gift tax. The elapse of time between issuance and assignment of the policies does not justify the substitution of cash-surrender value for replacement cost as the criterion of value. We cannot assume with respondents that at the dates of the gifts the policies presumably had no insurance, as distinguished from investment value to the donor. Here, as in the case where the issuance of the policies and their assignment as gifts are simultaneous, cash-surrender value reflects only a part of the value of the contracts. The cost of duplicating the policies at the dates of the gifts is in absence of more cogent evidence the one criterion which reflects both their insurance and investment value to the owner at that time. Cf. Vance on Insurance (2d ed.) pp. 332-333; *Speer* v. *Phoenix Mutual Life Ins. Co.,* 36 Hun. 322. The fact that the then condition of an insured's health might make him uninsurable emphasizes the conclusion that the use of that criterion will result in placing a minimum value upon such a gift.

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

SUPREME COURT OF THE UNITED STATES

No. 48.—October Term, 1932.

[illegible], Executor of the Estate of Mary [illegible], Petitioner, vs. The United States of America. | On Writ of Certiorari to the United States Circuit Court of Appeals for the [illegible] Circuit.

[illegible]

Mr. Justice [illegible] delivered the opinion of the Court.

[illegible]

[illegible]

Reversed.

A true copy.

Test:

Clerk, Supreme Court, U.S.

SUPREME COURT OF THE UNITED STATES.

No. 495.—October Term, 1940.

Joseph Ryerson and Edward L. Ryerson, Jr., as Executors of the Estate of Mary M. Ryerson, Petitioners,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit.

[March 3, 1941.]

Mr. Justice Stone delivered the opinion of the Court.

This is a companion case to No. 419, *Helvering* v. *Hutchings*, and No. 393, *United States* v. *Pelzer*, decided this day, and it presents the questions decided in those cases.

The sole question raised by the petition for certiorari is whether, under § 504(b) of the Revenue Act of 1932, 47 Stat. 169, 247, the donor of property in trust for numerous beneficiaries is entitled to a single gift tax exemption or exclusion to the extent of the first $5,000 of the gift or to separate exemptions of $5,000 for each beneficiary. The Government insists that if that question be decided against it, it is nevertheless entitled to retain the judgment below in its favor because the gifts to the beneficiaries were of future interests which, by § 504(b), are denied the benefit of the exclusion otherwise allowed by the section.

In 1934 petitioners' testatrix transferred two single premium insurance policies on her own life maturing at a future date, as additions to two separate trusts, one created in 1933, the other established in 1934 but before the transfer. The instrument creating the first trust provided that the trustees should pay over one-fourth of the net income to Mary Ryerson Frost, one of the trustees, for life, with remainder over for life to her two daughters if surviving at her death, with further remainders over to their issue *per stirpes*. The trust instrument directed that the remaining three-fourths of the income should be accumulated and added to the principal of the trust. It provided that the trust was to terminate upon the death of the last survivor of three persons, the first life tenant and her two daughters, and was then to be distributed, the particular distribution being dependent upon contingencies which are not now material. The trust instrument also contained numerous provisions for the termination of the trust by joint action of the trustees, Donald McKay Frost and Mary Ryerson Frost, who was also life tenant, or by the survivor or other of them in the case of the death or mental incapacity of either. Other provisions were made for the termination of the trust and distribution of the trust property in the event of the death or mental incapacity of both, without having exercised their power of termination.

The instrument creating the 1934 trust provided that upon the death of the grantor, who was the insured, who was living at the time of the transfer, the trustees should distribute the proceeds of the insurance as follows: If the widow of the grantor's son survived the grantor the income of one-third of the proceeds of the insurance policy was to be paid to the son's widow for life with remainders over to those persons who would be heirs at law of the son had he died at the same time as the life tenant. The remaining two-thirds of the proceeds or all if the son's widow did not survive the grantor, were to go to the descendants of the grantor's son then surviving, with gifts over in default of such descendants.

In a suit brought by petitioner to recover overpaid gift taxes for the year 1934 the district court ruled that in the computation of the tax the taxpayer was entitled to two exclusions to the extent of $5,000 each for the gifts made to Mary Ryerson Frost and Donald McKay Frost under the 1933 trust and to three exclusions under the 1934 trust, one for the son's widow and two for his two living descendants. The Court of Appeals for the Seventh Circuit reversed, 114 F. (2d) 150, holding that the two trusts were the donees and that a single exclusion was allowable for each trust. We granted certiorari November 12, 1940, to resolve the conflict between the decision below and that of the Circuit Courts of Appeals in the *Pelzer* case and the *Hutchings* case.

For the reasons stated in our opinion in the *Hutchings* case we hold that the beneficiaries of the two trusts were the persons to whom the gifts were made and that the gifts to them and not to the trusts, as the courts below held, were entitled to the benefit of the exclusion allowed by § 504(b) provided the gifts were not of "future interests" to which the section denies the benefit of the exclusion.

As the Government has not sought certiorari it cannot attack the judgment below, but it is free to sustain it upon any legal ground which will support it. *LeTulle* v. *Scofield*, 308 U. S. 415, 421, 422. Even though the judgment below was rested upon the erroneous ground that the trusts were "persons" to whom the gifts were made within the meaning of § 504(b), the Government may justify the judgment here on the ground that petitioners are not entitled to the exclusions claimed so far as the gifts were of future interests.

The gifts of a separate equal share of the corpus of the 1933 trust to each of the two trustees in the event of their joint request that the trust be terminated was a gift upon a contingency which might never happen. For the reasons stated in our opinion in the *Pelzer* case those gifts were of future interests within the meaning of § 504(b) and consequently were not entitled to the benefit of the exclusion. While a present power of disposition for one's own benefit is the equivalent of ownership, see *Curry* v. *McCandless*, 307 U. S. 357, 370, *et seq.*, and cases cited, here the joint power was not for the joint benefit of the donees of the power. Its exercise could only operate for the benefit of each to the extent of one-half of the trust property and then only in the event that both agreed to unite in its exercise. In any case use and enjoyment of any part of the trust fund by either was postponed until such time as both joined in the exercise of the power. The interests granted to the trustees upon their termination of the trust should therefore have been included to their full extent in the computation of the gift tax because they were "future interests" within the meaning of § 504(b) and Art. XI, Treasury Regulations 79. As the petitioners have been allowed one exclusion by the judgment below which is not attacked here it is unnecessary to consider whether the life interest in the income given to Mary Ryerson Frost is a present or future interest within the meaning of § 504(b).

For like reasons we conclude that the gifts to the beneficiaries of the 1934 trust were of future interests and that the petitioners are entitled to no exclusion with respect to them. The gift of income to the life tenant was contingent upon her survivorship of the grantor at a future date. The gifts of the principal amount of the proceeds of the policy to descendants of the deceased son of the grantor were in part contingent upon their survivorship of the son's widow and her survivorship of the grantor or, if she did not survive him, then the gifts of the entire principal were con-

tingent upon survivorship of the descendants at the grant
death. Thus all those who might become entitled to the use
enjoyment of the trust, principal and income, were ascerta
able only upon the happening of one or more uncertain futu
events, survivorship of one or more persons at the death of
donor, and so they were donees of gifts of "future interest
within the meaning of § 504(b) and the treasury regulations. Co
sequently petitioners are not entitled to the single exclusion whi
the court below allowed. But because the Government has soug
no cross-petition attacking the judgment below, it must be

Affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.